

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

JAYLEN FISHER,

Plaintiff,

v.

OFFICER GRADY KISSEE, *et al.*,

Defendants.

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Case No. 2:24-cv-906

Chief Judge Algenon L. Marbley

Magistrate Judge Elizabeth Preston Deavers

ORDER


This issue is before this Court on Defendants Officer Kisse, the City of Columbus, the Columbus Police Department, and the Chief of Police’s Partial Motion to Dismiss. (ECF No. 8). Plaintiff is proceeding with the assistance of counsel and submitted a response indicating that the Motion is unopposed. (ECF No. 13).

Defendants’ Motion seeks partial dismissal on the following grounds: (1) dismissal of all claims against the Police Department because the Department is *sui juris* and cannot be sued; (2) dismissal of all claims against the Police Chief in both her individual and official capacity because Plaintiff presents no allegations of her personal involvement in the relevant incident, as is required for an individual capacity claim, and a suit against her in her official capacity duplicates claims against the City itself; (3) dismissal of the state law claim for assault and battery against Officer Kisse as barred by the one-year statute of limitations; (4) dismissal of the state law claim for negligence against Office Kisse because it is an impermissible “relabeling” of the assault and battery claim; and (5) dismissal of any claims for punitive damages against the City. (ECF No. 8). Plaintiff’s response indicates that he does not oppose Defendants Motion, but he will continue to pursue his claims against the City of Columbus and Officer Grady Kisse as laid out in Count I

(Excessive Force and Unconstitutional Seizure) and Count II (*Monell* claim) of his Complaint. (ECF No. 13).

This Court has reviewed Defendants' Motion and notes Plaintiff's acquiescence thereto. An unopposed motion to dismiss may be granted on those grounds alone. *See Humphrey v. U.S. Attorney Gen.'s Office*, 279 Fed.Appx. 328, 331 (6th Cir. 2008) (explaining that "where, as here, plaintiff has not raised arguments in the district court by virtue of his failure to oppose defendants' motion to dismiss, the arguments have been waived."). Indeed, "a district court's power to grant dispositive motions because they are unopposed is firmly settled." *Showes v. Mediate*, No. 4:15 CV 1880, 2016 WL 5364214, at *2 (N.D. Ohio Sept. 26, 2016). Given that Plaintiff affirmatively declined to oppose Defendants' Motion, Defendants' Partial Motion to Dismiss (ECF No. 8) is **GRANTED.**

IT IS SO ORDERED.


ALGENON L. MARBLEY
CHIEF UNITED STATES DISTRICT JUDGE

DATED: July 9, 2024